

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
September 11, 2007 (2:00 p.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Michael Redifer, Board member, presided. No other Board members were present.

Joseph Haughwout appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case

Lic = Licensing Application

RF = Recovery Fund Claim

Trades = Tradesmen Disciplinary Case/Application

C = Complainant/Claimant

A = Applicant

R = Respondent/Regulant

W = Witness

Atty = Attorney

Participants

1. Outdoor Maintenance Service LLC
File Number 2007-00082 (Disc)
(NO DECISION MADE)

None.

(IFF continued from 8/28/07, per DPOR on 8/28/07)

The meeting adjourned at 2:32 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Jay DeBoer, Secretary

COPY TESTE:

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Outdoor Maintenance Service, LLC

File Number: 2007-00082
License Number: 2705083165

SUMMARY OF THE INFORMAL FACT-FINDING CONFERENCE

On July 12, 2007, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Outdoor Maintenance Service LLC ("Outdoor") to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was returned by United States Postal Service ("USPS"), marked as "Return to Sender, Unclaimed, Unable to Forward".

On August 28, 2007, a Notice to Reschedule the Informal Fact-Finding Conference ("IFF") was mailed via United Parcel Service Mail ("UPS") to the address of record and two alternative addresses as follows: 130 Windy Hill Lane, Winchester, Virginia 22602 and 132 Windy Hill Lane, Winchester, Virginia 22602.

On September 11, 2007, the IFF was convened at the Department of Professional and Occupational Regulation ("the Department").

The following individuals participated at the IFF: Joseph Haughwout and Jesstina Adelman, Staff Members; and Michael Redifer, Presiding Board Member. Neither Outdoor, Respondent, nor anyone on its behalf appeared at the IFF.

RECOMMENDATION

Based upon the evidence and the IFF, the following is recommended regarding the Counts as outlined in the Report of Findings:

In July 2005, Outdoor entered into a contract with Roger and Rebecca Bensenhaver ("the Bensenhavers"), in the amount of \$32,000.00, to install a roof at the subject property in Winchester, Virginia. In October 2005, the parties entered into a second contract, in the amount of \$8,600.00, for Outdoor to install siding, fascia trim, and soffits at the subject property.

Count 1: Board Regulation

The contracts used by Outdoor in the transaction failed to contain subsections a., e., and h. (contractor's license information), as required by the regulation.

It appears Outdoor does not fully understand the requirements of the Board's regulations in relation to the minimum provisions to be included in a contract. Although this is a technicality, as the Board has seen in the past, the impact of failing to include some provisions can have a greater impact than anticipated by the parties to the contract. The purpose of including these provisions is to protect both the contractor and the consumer, and failure to do so, is poor business practice.

Outdoor's failure to include minimum provisions in the contract is a violation of Board Regulation 18 VAC 50-22-260.B.9. Therefore, I recommend a monetary penalty of \$350.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 2: Board Regulation

Outdoor is a Class C contractor and, accordingly, is prohibited by the Board's regulations from offering and entering into a contract of \$7,500.00 or greater. Despite this, Outdoor entered into a \$32,000.00 contract. In addition, Outdoor was paid in full for the contract.

Outdoor entered into a contract that exceeded its Class C contractor's license monetary limit by \$24,500.00. By doing so, Outdoor disregarded the Board's authority and performed work on a job it lacked the experience and verified financial stability to perform. The Bensenhavers complained that although Outdoor completed the roof work, there were wide gaps in the middle and many shingles were not laid flat. While there is no guarantee that had Outdoor been a Class B contractor it would have properly performed the work, I believe it would have been more likely to properly complete a project of this size and scope. During the investigation, it was learned that Outdoor may have suffered from financial problems, which impacted its ability to complete the project. Had Outdoor followed the Board's regulations and operated within its class, I believe it less likely these problems would have occurred.

Outdoor's practicing in a class of license for which it is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$750.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 3: Board Regulation

In addition to my recommendation in Count 2:

Outdoor also entered into \$8,600.00 contract, which exceeded its Class C license monetary limit by \$1,100.00. Further, Outdoor was paid at least \$8,000.00 toward this project.

Outdoor's practicing in a class of license for which it is not licensed is a violation of Board Regulation 18 VAC 50-22-260.B.27. Therefore, I recommend a monetary penalty of \$350.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 4: Board Regulation

According to the record, Outdoor began work on the siding in October 2005, but had not completed it when it left the project in June 2006. The Bensenhavers made several attempts to contact Outdoor regarding completion of the project, to which it failed to respond. In addition to its failure to complete the work, the work Outdoor did perform was substantially defective. According to Roger Bensenhaver, a representative for Outdoor indicated the company was having financial problems. The Bensenhavers subsequently hired another contractor, at an additional cost of \$6,613.52, to correct and complete the siding. Outdoor's abandonment of work under the contract is a violation of Board Regulation 18 VAC 50-22-260.B.14.

Outdoor's conduct is inexcusable. The Bensenhavers entered into a contract and made payment in good faith expecting the work to be completed. Instead, Outdoor left the Bensenhavers with little in return. If Outdoor was having financial problems, then it could have done the right thing by working out an arrangement with the Bensenhavers to resolve the open contract and have another company complete the work. I note, however, that if Outdoor was in fact suffering from financial problems, these might have been avoided had it not contracted outside of its license class. Its actions reflect a disregard for the Board's regulations and its obligations as a professional. I do not believe Outdoor possesses sufficient character necessary for licensure.

Therefore, I recommend a monetary penalty of \$1,500.00 and license revocation be imposed.

Count 5: Board Regulation

In addition to my recommendation in Count 4:

The Bensenhavers paid Outdoor \$9,950.00 toward the siding contract (priced at \$8,600.00) and for additional items. However, it failed to complete the work, and did not refund any

money for the work it failed to complete. Outdoor's retention of funds received for work not performed, or performed only in part, is a violation of Board Regulation 18 VAC 50-22-260.B.16.

Based on my reasons as outlined in Count 4, I recommend a monetary penalty of \$750.00 license revocation be imposed.

Count 6: Board Regulation

Although the contract between the parties specified any additional work involving extra costs would be executed by way of a change order, during the project Outdoor agreed to install tongue-and-groove planking on the porch ceiling, for an additional price. Outdoor failed to use a written change order for this modification to the scope of work and cost, which is a violation of Board Regulation 18 VAC 50-22-260.B.31.

The purpose of this particular regulation is to memorialize agreements between the parties that are established outside of the original contract. The use of change orders provides written proof and assurance that the parties agree with all aspects of such modifications, including scope and cost. Failure to obtain and use written change orders helps prevent cost overruns and financial disputes that are common in the contracting industry. If this regulation did not exist, the harm to both the contractor and consumers would be inevitable. Contractors who, upon request of the consumer, performed additional work without proper documentation could be denied the opportunity to collect additional monies. Meanwhile, contractors may modify the contractual agreement without the consumer's knowledge and require consumers to absorb the extra cost. Therefore, I recommend a monetary penalty of \$500.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

Count 7: Board Regulation

According to the record, the investigator attempted to contact Outdoor by mail at three separate addresses, including its license address of record, all of which were established as valid. However, Outdoor failed to respond to the investigator's request for a response to the complaint. Outdoor's failure to respond to the investigator is a violation of Board Regulation 18 VAC 50-22-260.B.13.

Outdoor's failure to respond to the investigator is a serious violation of the Board's regulations, as it impairs the Board's ability to fully investigate complaints. It is the obligation of a licensee to fully cooperate with the Board when it attempts to investigate complaints. The investigator made reasonable attempts to contact Outdoor and the facts indicate it elected not to respond, and thereby not comply with the Board's regulations, which I find to be an aggravating circumstance. Therefore, I recommend a monetary penalty of \$1,000.00 and remedial education be imposed.

The Board's contracting license class (remedial education) must be successfully completed by a member of Responsible Management within ninety (90) days of the effective date of the order.

By: _____
Michael Redifer
Presiding Board Member

Board for Contractors

Date: _____

MONETARY PENALTY TERMS

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN NINETY (90) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN NINETY (90) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF THE LICENSE, CERTIFICATE, OR REGISTRATION UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: January 8, 2007 (Revised July 11, 2007)

FILE NUMBER: 2007-00082
RESPONDENT: Outdoor Maintenance Service LLC
LICENSE NUMBER: 2705083165
EXPIRATION: March 31, 2008

SUBMITTED BY: Carolyn D. Wright, Investigator
APPROVED BY: Sheon J. Rose, Assistant Director

COMMENTS:

None.

Outdoor Maintenance Service LLC ("Outdoor") was at all times material to this matter a licensed Class C contractor in Virginia (No. 2705083165).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On July 10, 2006, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Roger and Rebecca Bensenhaver ("the Bensenhavers") regarding Outdoor. (Exh. C-1)

On July 25, 2005, Outdoor entered into a written contract, in the amount of \$32,000.00, with the Bensenhavers to install a roof at 490 Peeper Lane, Winchester, VA 22603. (Exh. C-2)

On October 31, 2005, Outdoor entered into a written contract, in the amount of \$8,600.00, with the Bensenhavers to install siding, fascia trim metal, and soffits at the subject property. (Exh. C-3)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:
 - a. When work is to begin and the estimated completion date;
 - e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
 - h. Contractor's name, address, license number, expiration date, class of license, and classifications or specialty services.

FACTS:

The contracts used by Outdoor in the transaction failed to contain subsections: a. and e. The contracts also failed to contain the contractor's license number, expiration date, class of license, and classifications or specialty services, as required by subsection h. (Exh. C-2 and C-3)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

FACTS:

The contract for the roof work indicated a price of \$32,000.00. (Exh. C-2)

On March 18, 2004, Outdoor was issued Class C contractor's license number 2705083165. (Exh. I-1)

Section 54.1-1100 of the Code of Virginia states, "Class C contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,500..."

3. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: August 1, 2005

FACTS:

The contract for the siding, fascia metal and soffit indicated a price of \$8,600.00. (Exh. C-3)

On March 18, 2004, Outdoor was issued Class C contractor's license number 2705083165. (Exh. I-1)

Section 54.1-1100 of the Code of Virginia states, "Class C contractors' perform or manage construction, removal, repair, or improvements when (i) the total value referred to in a single contract or project is over \$1,000 but less than \$7,500..."

4. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

14. Abandonment (defined as the unjustified cessation of work under the contract for a period of 30 days or more).

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: August 1, 2005

FACTS:

In October 2005, Outdoor commenced work on the siding. (Exh. C-1)

Outdoor last performed work at the subject property on or about June 2006. (Exh. I-2)

As of December 12, 2006, Outdoor failed to complete the Hardi Plank siding, trim boards, fascia trim metal, and soffit. (Exh. I-2)

The Bensenhavers hired another contractor to install the siding, soffit, and wrap the fascia. (Exh. C-5)

5. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: August 1, 2005

FACTS:

In addition to the facts outlined in Count 3:

On November 29, 2005, the Bensenhavers paid Outdoor \$4,000.00, by check, for soffit material. On April 12, 2006, the Bensenhavers paid Outdoor \$1,950.00, by check, for the siding work and installation of tongue and groove boards on the porch ceiling. On April 25, 2006, the Bensenhavers paid Outdoor \$4,000.00, by check, for the balance of the siding contract. (Exh. C-4)

As of January 8, 2007, Outdoor failed to refund money received for work performed only in part. (Exh. I-2)

6. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: August 1, 2005

FACTS:

The contract specified, "Any alteration or deviation from the above specifications involving extra costs will be executed only upon a written order and will become an extra charge over and above the proposed estimate", and did not reference installation of tongue in groove planking on the porch ceiling. (Exh. C-2 and C-3)

On April 12, 2006, the Bensenhavers paid Outdoor \$1,950.00 for siding work and installation of tongue in groove planking on the porch ceiling. (Exh. C-4)

No written change order was executed for the installation of the porch ceiling. (Exh. I-2)

7. Board Regulation

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

13. Failing to respond to an investigator or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor.

Historical Notes:

Derived from VR220-01-2:1 §5.7, eff. March 31, 1995; amended, Virginia Register Volume 17, Issue 21, eff. September 1, 2001.

Print Date: February 1, 2006

FACTS:

On September 27, 2006, Investigator Carolyn D. Wright ("Wright"), the Board's agent, sent a written request to Outdoor at the address of record of 7766 Church Street, Middletown, VA 22645, requesting a written response and supporting documents to the complaint filed with the Board. Wright requested the response be received by October 13, 2006. (Exh. I-4)

On November 1, 2006, Wright sent a written request to Outdoor at the address shown on WhitePages.com of 130 Windy Hill Lane, Winchester, VA 22602, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the response be received by November 16, 2006. (Exh. I-5 and I-7)

On November 1, 2006, Wright sent a written request to Outdoor at the address shown on the subject contracts of 132 W1-1 Windy Hill Lane, Winchester, VA 22602, requesting a written response and supporting documents to the complaint filed with the Board. Wright requested the response be received by November 16, 2006. (Exh. I-6)

On November 4, 2006, the Winchester, VA Postmaster certified that mail is delivered to Outdoor at 130 Windy Hill Lane, Winchester, VA 22602. (Exh. I-8)

On November 4, 2006, the Winchester, VA Postmaster certified that mail is delivered to Outdoor at 132 W1-1 Windy Hill Lane, Winchester, VA 22602. (Exh. I-9)

On November 8, 2006, the Middletown, VA Postmaster certified that mail is delivered to Outdoor at 7766 Church Street, Middletown, VA 22645. (Exh. I-10)

As of January 8, 2007, Outdoor failed to respond to the investigator seeking information in the investigation of a complaint filed with the Board.

Custodian of Records

